

ESTTA Tracking number: **ESTTA437442**Filing date: **10/24/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Victus, Inc.
Granted to Date of previous extension	10/23/2011
Address	4918 S.W. 74th Court Miami, FL 33155 UNITED STATES

Attorney information	Jennie S. Malloy Malloy & Malloy, P.A. 2800 S.W. 3rd Ave Miami, FL 33129 UNITED STATES oruiz@malloylaw.com, litigation@malloylaw.com, jsmalloy@malloylaw.com Phone:305-858-8000
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**Applicant Information**

Application No	85070002	Publication date	04/26/2011
Opposition Filing Date	10/24/2011	Opposition Period Ends	10/23/2011
Applicant	Western Holdings, LLC 1000 East William Street, Suite 204 Carson City, NV 89701 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Dietary supplements
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2228045	Application Date	12/12/1997
Registration Date	03/02/1999	Foreign Priority Date	NONE
Word Mark	ENTEREX		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 005. First use: First Use: 1996/00/00 First Use In Commerce: 1996/00/00 balanced nutritional supplement in a lactose free, liquid form providing essential vitamins and minerals for low cholesterol and sodium restricted diets

U.S. Registration No.	2645540	Application Date	08/09/2001
Registration Date	11/05/2002	Foreign Priority Date	NONE

Word Mark	ENTEREX DIABETIC
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2000/09/30 First Use In Commerce: 2001/02/28 balanced nutritional supplement in a lactose-free liquid form providing essential vitamins and minerals for persons requiring controlled glucose intake
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U.S. Registration No.	2894308	Application Date	12/09/2002
Registration Date	10/19/2004	Foreign Priority Date	NONE


Word Mark	ENTEREX RENAL
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 005. First use: First Use: 2002/03/23 First Use In Commerce: 2002/03/23 protein calorie supplement, low in electrolytes, lactose and gluten free for renal patients
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U.S. Registration No.	3636249	Application Date	02/13/2008
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Registration Date	06/09/2009	Foreign Priority Date	NONE
Word Mark	ENTEREX KIDZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2008/08/31 First Use In Commerce: 2008/08/31 balanced nutritional supplement in liquid form for providing essential vitamins and minerals for children		

Attachments	76296463#TMSN.gif ( 1 page )( bytes ) 76475708#TMSN.gif ( 1 page )( bytes ) 77396310#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 18 pages )(423353 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Oliver Alan Ruiz/
Name	Oliver Alan Ruiz
Date	10/24/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 85/070,002  
For the mark "XANTREX"  
Published in the Official Gazette on April 26, 2011

VICTUS, INC.	)	
	)	
Opposer,	)	
	)	
vs.	)	Opposition No.
	)	
WESTERN HOLDINGS, LLC	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

COMES NOW the Opposer, Victus, Inc. ("Opposer"), a Florida corporation, having a principal place of business at 4918 S.W. 74th Court, Miami, FL 33155, and opposes Application Serial No. 85/070,002, filed by Western Holdings, LLC ("Applicant"), a Nevada limited liability company, having an address of 1000 East William Street, Suite 204, Carson City, NV 89701. Opposer believes that it is or will be damaged by Application Serial No. 85/070,002 and the registration of the mark applied for therein, and alleges the following for opposition of same:

**LIKELIHOOD OF CONFUSION**

1. Opposer is the owner of common law rights in, and U.S. Registration No. 2,228,045 for, the mark "ENTEREX" (hereinafter "Opposer's Mark") in connection with balanced nutritional supplement in a lactose free, liquid form providing essential vitamins and minerals for low cholesterol and sodium restricted diets. A current printout of information from the electronic database records of the USPTO, showing the current status and title of the above-referenced registration is attached hereto as Exhibit A.

2. Opposer is also the owner of the following registrations:

- a. U.S. Registration No. 2,645,540 for the mark “ENTEREX DIABETIC” in connection with balanced nutritional supplement in a lactose-free liquid form providing essential vitamins and minerals for persons requiring controlled glucose intake;
- b. U.S. Registration No. 2,894,308 for the mark “ENTEREX RENAL” in connection with protein calorie supplement[s], low in electrolytes, lactose and gluten free for renal patients; and
- c. U.S. Registration No. 3,636,249 for the mark “ENTEREX KIDZ” in connection with balanced nutritional supplement in liquid form for providing essential vitamins and minerals for children.

Current printouts of information from the electronic database records of the USPTO, showing the current status and title of the above-referenced registrations are attached hereto as Composite Exhibit B. These marks are further incorporated into the definition of “Opposer’s Mark” herein.

3. Long prior to any date upon which Applicant may rely, Opposer adopted and used Opposer’s Mark in interstate commerce.
4. Since its adoption and first use in interstate commerce, Opposer has continuously used the Opposer’s Mark in interstate commerce for and in connection with the above-referenced goods, and has not abandoned this mark.
5. Opposer has expended considerable time, money, and effort in promoting its goods under the Opposer’s Mark. The strength of Opposer’s Mark has grown, such that Opposer has established exceedingly valuable goodwill in the mark.
6. The alleged trademark sought to be opposed is Serial No. 85/070,002, an intent-to-use application for the mark “XANTREX,” in connection with dietary supplements.
7. Applicant filed the above-referenced intent-to-use application on June 23, 2010.
8. The mark identified in Applicant’s Serial No. 85/070,002 is highly similar to Opposer’s Mark.

9. The goods identified in Applicant's Serial No. 85/070,002 are identical to, substantially similar to, or within the normal expansion of, the goods offered by Opposer in connection with Opposer's Mark.

10. Applicant's goods would be sold or offered for sale to the same consumers as Opposer's goods, and through the same channels of trade.

11. There is a likelihood of confusion between Opposer's Mark, for its goods, and Applicant's mark for the goods set forth in Serial No. 85/070,002.

12. If Applicant is permitted to obtain a registration for Serial No. 85/070,002, for the mark and goods set forth therein, there will be a continued likelihood of confusion, mistake, and deception among the consuming public and the trade, all in violation of §2(d) of the Lanham Act, 15 U.S.C. §1052(d).

WHEREFORE, Opposer prays that this Opposition be granted and that the aforesaid Application Serial No. 85/070,002 be denied registration.

An electronic copy of this Notice of Opposition and the fee required in 37 C.F.R. §2.6(a)(17) are enclosed herewith.

Respectfully submitted,

Dated: October 24, 2011

By: /Oliver Alan Ruiz/  
Jennie Sue Malloy  
Florida Bar No. 655,740  
Oliver Alan Ruiz  
Florida Bar No. 524,786  
**MALLOY & MALLOY, P.A.**  
2800 S.W. Third Avenue  
Miami, Florida 33129  
Telephone: (305) 858-8000  
Facsimile: (305) 858-0008  
Email: oruiz@malloylaw.com  
*Attorneys for Opposer*

**CERTIFICATE OF FILING**

I HEREBY CERTIFY that the foregoing Notice of Opposition was filed electronically via the ESTTA, at the United States Patent and Trademark Office, Trademark Trial and Appeal Board's ESTTA electronic filing system, on October 24, 2011.

By: /Oliver Alan Ruiz/  
Oliver Alan Ruiz  
Florida Bar No. 524,786

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and complete copy of the foregoing Notice of Opposition has been served on the following by mailing said copy on October 24, 2011, via First Class Mail, postage prepaid to:

Correspondent  
David R. Parkinson  
5742 West Harold Gatty Drive  
Salt Lake City UT 84116  
Phone Number: 801-517-7048  
Fax Number: 801-530-2966

Respectfully submitted,

By: /Oliver Alan Ruiz/  
Oliver Alan Ruiz  
Florida Bar No. 524,786

**EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-10-24 14:57:53 ET**

**Serial Number:** 75404314 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2228045

**Mark (words only):** ENTEREX

**Standard Character claim:** No

**Current Status:** The registration has been renewed.

**Date of Status:** 2009-08-17

**Filing Date:** 1997-12-12

**Transformed into a National Application:** No

**Registration Date:** 1999-03-02

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 830 -Post Registration

**Date In Location:** 2009-08-17

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. VICTUS, INC.

**Address:**

VICTUS, INC.

4918 S.W. 74TH COURT

MIAMI, FL 33155

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Florida

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**GOODS AND/OR SERVICES**

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**International Class:** 005

**Class Status:** Active

balanced nutritional supplement in a lactose free, liquid form providing essential vitamins and minerals for low cholesterol and sodium restricted diets

**Basis:** 1(a)

**First Use Date:** 1996-00-00

**First Use in Commerce Date:** 1996-00-00

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#### ADDITIONAL INFORMATION

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(NOT AVAILABLE)

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#### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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#### PROSECUTION HISTORY

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-08-17 - First renewal 10 year

2009-08-17 - Section 8 (10-year) accepted/ Section 9 granted

2009-07-30 - Assigned To Paralegal

2009-07-27 - TEAS Section 8 & 9 Received

2005-03-27 - Section 8 (6-year) accepted & Section 15 acknowledged

2005-03-27 - Assigned To Paralegal

2005-03-01 - Section 8 (6-year) and Section 15 Filed

2005-03-01 - PAPER RECEIVED

1999-03-02 - Registered - Principal Register

1998-12-08 - Published for opposition

1998-11-06 - Notice of publication

1998-08-21 - Approved for Pub - Principal Register (Initial exam)

1998-08-18 - Examiner's amendment mailed

1998-08-18 - Assigned To Examiner

1998-08-11 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

JENNIE S. MALLOY

**Correspondent**

JENNIE S. MALLOY

MALLOY & MALLOY, P.A.

HISTORIC CORAL WAY

2800 S.W. THIRD AVENUE

MIAMI FL 33129

Phone Number: 305-858-8000

Fax Number: 305-858-0008

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**EXHIBIT B**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-10-24 16:07:57 ET**

**Serial Number:** 76296463 Assignment Information

Trademark Document Retrieval

**Registration Number:** 2645540

**Mark**

*Enterex  
Diabetic*

**(words only):** ENTEREX DIABETIC

**Standard Character claim:** No

**Current Status:** A Sections 8 and 15 combined declaration has been accepted and acknowledged.

**Date of Status:** 2008-11-29

**Filing Date:** 2001-08-09

**Transformed into a National Application:** No

**Registration Date:** 2002-11-05

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 105

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 830 -Post Registration

**Date In Location:** 2008-11-29

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Victus, Inc.

**Address:**

Victus, Inc.  
4918 S.W. 74th Court  
Miami, FL 33155  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Florida

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**GOODS AND/OR SERVICES**

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**International Class:** 005  
**Class Status:** Active  
balanced nutritional supplement in a lactose-free liquid form providing essential vitamins and minerals for persons requiring controlled glucose intake  
**Basis:** 1(a)  
**First Use Date:** 2000-09-30  
**First Use in Commerce Date:** 2001-02-28

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "DIABETIC"

**Prior Registration Number(s):**  
2228045

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-11-29 - Section 8 (6-year) accepted & Section 15 acknowledged

2008-11-20 - Assigned To Paralegal

2008-11-11 - TEAS Section 8 & 15 Received

2008-05-07 - Case File In TICRS

2002-11-05 - Registered - Principal Register

2002-08-13 - Published for opposition

2002-08-13 - Published for opposition

2002-07-24 - Notice of publication

2002-05-22 - Approved for Pub - Principal Register (Initial exam)

2002-03-22 - Communication received from applicant

2002-03-22 - PAPER RECEIVED

2001-09-21 - Non-final action mailed

2001-09-17 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Jennie S. Malloy

**Correspondent**

Jennie S. Malloy  
MALLOY & MALLOY, P.A.  
HISTORIC CORAL WAY  
2800 S.W. THIRD AVENUE  
MIAMI FL 33129

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2011-10-24 16:07:44 ET

Serial Number: 76475708 Assignment Information      Trademark Document Retrieval

Registration Number: 2894308

Mark

*Enterex  
Renal*

(words only): ENTEREX RENAL

Standard Character claim: No

Current Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Date of Status: 2009-12-01

Filing Date: 2002-12-09

Transformed into a National Application: No

Registration Date: 2004-10-19

Register: Principal

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: M60 -TMO Law Office 115

Date In Location: 2009-12-01

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Victus, Inc.

Address:

Victus, Inc.  
4918 S.W. 74th Court  
Miami, FL 33155  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Florida

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**GOODS AND/OR SERVICES**

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**International Class:** 005  
**Class Status:** Active  
protein calorie supplement, low in electrolytes, lactose and gluten free for renal patients  
**Basis:** 1(a)  
**First Use Date:** 2002-03-23  
**First Use in Commerce Date:** 2002-03-23

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "RENAL"

**Prior Registration Number(s):**  
2228045  
2645540

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-12-01 - Section 8 (6-year) accepted & Section 15 acknowledged  
2009-12-01 - Case Assigned To Post Registration Paralegal  
2009-11-18 - TEAS Section 8 & 15 Received  
2004-10-19 - Registered - Principal Register  
2004-08-18 - Extension Of Time To Oppose Process - Terminated  
2003-11-12 - Extension Of Time To Oppose Received  
2003-09-23 - Published for opposition

2003-09-03 - Notice of publication

2003-07-14 - Approved for Pub - Principal Register (Initial exam)

2003-05-29 - Communication received from applicant

2003-06-18 - Case File In TICRS

2003-05-29 - PAPER RECEIVED

2003-03-24 - Non-final action mailed

2003-03-18 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Jennie S. Malloy (a member of the Bar of the State of Florida)

**Correspondent**

JENNIE S. MALLOY

MALLOY & MALLOY, P.A.

2800 S.W. THIRD AVENUE

HISTORIC CORAL WAY

MIAMI, FL 33129

Phone Number: (305) 858-8000

Fax Number: (305) 858-0008

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**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-10-24 16:07:19 ET**

**Serial Number: 77396310 Assignment Information      Trademark Document Retrieval**

**Registration Number: 3636249**

**Mark**



**(words only): ENTEREX KIDZ**

**Standard Character claim: No**

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2009-06-09

**Filing Date:** 2008-02-13

**Transformed into a National Application: No**

**Registration Date:** 2009-06-09

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 106

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2009-05-05

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Victus, Inc.

**Address:**

Victus, Inc.  
4918 SW 74 Court  
Miami, FL 33155  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** Florida

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**GOODS AND/OR SERVICES**

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**International Class:** 005  
**Class Status:** Active  
balanced nutritional supplement in liquid form for providing essential vitamins and minerals for children  
**Basis:** 1(a)  
**First Use Date:** 2008-08-31  
**First Use in Commerce Date:** 2008-08-31

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**ADDITIONAL INFORMATION**

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**Color(s) Claimed:**

**Disclaimer:** "KIDS"

**Design Search Code(s):**  
**01.01.03** - Star - a single star with five points  
**27.03.05** - Objects forming letters or numerals

**Prior Registration Number(s):**  
2228045  
2645540  
2894308

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-06-09 - Registered - Principal Register

2009-05-05 - Law Office Registration Review Completed

2009-05-04 - Allowed for Registration - Principal Register (SOU accepted)

2009-04-09 - Statement Of Use Processing Complete  
2009-03-23 - Use Amendment Filed  
2009-04-09 - Case Assigned To Intent To Use Paralegal  
2009-03-23 - TEAS Statement of Use Received  
2008-09-23 - NOA Mailed - SOU Required From Applicant  
2008-07-01 - Published for opposition  
2008-06-11 - Notice of publication  
2008-05-28 - Examiner's amendment mailed  
2008-05-27 - Law Office Publication Review Completed  
2008-05-27 - Assigned To LIE  
2008-05-27 - Approved For Pub - Principal Register  
2008-05-27 - Examiner's Amendment Entered  
2008-05-27 - Examiners Amendment - Written  
2008-05-23 - Assigned To Examiner  
2008-02-20 - Notice Of Design Search Code And Pseudo Mark Mailed  
2008-02-19 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Jennie S. Malloy

**Correspondent**

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Phone Number: 305-858-8000  
Fax Number: 305-858-0008

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